

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Squad #4	CCRB Case #: 201502662	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 04/09/2015 1:50 AM	Location of Incident: 121st Precinct stationhouse	Precinct: 121	18 Mo. SOL 10/9/2016	EO SOL 10/9/2016	
Date/Time CV Reported Thu, 04/09/2015 8:09 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 04/09/2015 8:09 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Timothy Magliente	04087	942097	121 PCT
2. SGT Peter Guido	03262	922464	121 PCT
3. POM Genaro Barreiro	00308	950050	121 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Genaro Barreiro	Discourtesy: PO Genaro Barreiro spoke rudely to § 87(2)(b)	
B.SGT Peter Guido	Discourtesy: Sgt. Peter Guido spoke rudely to § 87(2)(b)	
C.SGT Peter Guido	Force: Sgt. Peter Guido used physical force against § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

On April 9, 2015, § 87(2)(b) filed this complaint with the CCRB via telephone on behalf of her son, § 87(2)(b). § 87(2)(b) did not witness the incident herself. On the same day, Sgt. Timothy Magliente of the 121st Precinct filed this complaint with IAB via telephone on behalf of § 87(2)(b) who was in police custody at the time. Sgt. Magliente's complaint was referred to the CCRB via IAB log #2015-9841. This case was initially truncated on April 29, 2015, after § 87(2)(b) failed to respond to contact attempts. § 87(2)(b) then called the CCRB on May 5, 2015. A telephone interview was conducted, and a verification form was mailed to him. § 87(2)(b) mailed the signed verification form to the CCRB on June 12, 2015. § 87(2)(g)

In the early morning on April 9, 2015, § 87(2)(b) was being held at the 121st Precinct stationhouse after he was arrested for § 87(2)(b). § 87(2)(b) had sustained a gunshot wound to his left knee in December 2014. As a result of this injury, § 87(2)(b) is wheelchair-bound, and has a brace on his left leg. § 87(2)(b)'s mother, § 87(2)(b), had visited § 87(2)(b) earlier in the evening at the stationhouse and given him a cigarette. At approximately 1:50 a.m., PO Genaro Barreiro entered the holding cell area. No other officers or civilians were in the holding cell at the time. § 87(2)(b) asked PO Barreiro if he had a light for the cigarette. PO Barreiro told § 87(2)(b) "Give me that fucking stick before I take the shit from you" (**Allegation A**). § 87(2)(b) refused to hand it over.

PO Barreiro left the room for several minutes. He returned with several uniformed officers. The investigation was able to identify two of these officers as Sgt. Magliente, the patrol supervisor, and Sgt. Peter Guido, the housing supervisor. Sgt. Magliente, Sgt. Guido and PO Barreiro then entered § 87(2)(b)'s holding cell. Sgt. Guido and PO Barreiro then grabbed § 87(2)(b)'s arms and pulled them behind his back. § 87(2)(b) attempted to pull his arms away from the officers, but was unsuccessful. Sgt. Guido and PO Barreiro then lifted § 87(2)(b) out of his chair and placed him against the cell wall, face-first. § 87(2)(b)'s left knee (where his gunshot wound was located) made contact with the wall as well, causing him pain. § 87(2)(b) then attempted to pull away from the officers. Sgt. Guido asked § 87(2)(b) "You want to be a fucking tough guy?" (**Allegation B**). He then punched § 87(2)(b) once on the left side of his neck (**Allegation C**).

PO Barreiro and Sgt. Guido placed § 87(2)(b) in handcuffs. PO Barreiro searched him to ensure that he did not have any additional contraband. The officers then returned § 87(2)(b) to his wheelchair. The officers then left the holding cells, leaving § 87(2)(b) alone. § 87(2)(b) felt pain to his neck and left shoulder as a result of the struggle. After about an hour, § 87(2)(b) asked to be taken to the hospital. § 87(2)(b) was transported to § 87(2)(b) by ambulance.

Mediation, Civil and Criminal Histories

§ 87(2)(b)'s case was ineligible for mediation. A notice of claim request was submitted to the Comptroller's office on July 7, 2015. It will be included in the case file upon receipt. § 87(2)(b)

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by or involving § 87(2)(b)
- § 87(2)(b)
- PO Barreiro has been a member of the service for four years, and there are no substantiated CCRB allegations against him. A previous discourtesy allegation was unfounded against him.
- Sgt. Guido has been a member of the service for sixteen years and there are no substantiated CCRB allegations against him. Two previous force allegations against Sgt. Guido have been unsubstantiated and exonerated, respectively. He has never been the subject of a discourtesy allegation.
- Sgt. Magliente has been a member of the service for eight years, and there are no substantiated CCRB allegations. Sgt. Magliente has never been the subject of a CCRB allegation.

Findings and Recommendations

Allegations Not Pleaded:

§ 87(2)(g)

Allegation A: Discourtesy – PO Genaro Barreiro spoke rudely to § 87(2)(b)

Allegation B: Discourtesy – Sgt. Peter Guido spoke rudely to § 87(2)(b)

§ 87(2)(b) was interviewed by telephone on May 5, 2015 (See Board Review: § 87(2)(b)'s Statements). He alleged that when he asked PO Barreiro for a light, PO Barreiro told him, "Give me that fucking stick before I take the shit from you." He further alleged that when PO Barreiro and Sgt. Guido held him against a wall, Sgt. Guido asked him, "You want to be a fucking tough guy?" PO Barreiro, Sgt. Guido and Sgt. Magliente were all interviewed at the CCRB on July 2, 2015 (See Board Review: MOS Statements). PO Barreiro, who confirmed that he was the only officer present during the initial interaction, denied using any profanity while asking § 87(2)(b) for his cigarette. All three officers denied that Sgt. Guido referred to § 87(2)(b) as a "fucking tough guy" while in the holding cell. All of the officers denied that any profanity was used during the incident, and no other civilians or officers were present in the holding cell at the time. § 87(2)(g)

Allegation C: Force – Sgt. Peter Guido used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) refused to turn over the cigarette that he had with him in the holding cells. It is also undisputed that PO Barreiro and Sgt. Guido pulled § 87(2)(b)'s arms behind his back, placed him face-first against the wall, and handcuffed him in order to search him

for further contraband. § 87(2)(b) was subsequently hospitalized at § 87(2)(b).

§ 87(2)(b) alleged that while he was against the wall, Sgt. Guido punched him once on the left side of his neck. While § 87(2)(b) denied suffering any cuts, bruises or fractures from this injury, he stated that he experienced lasting pain to his left shoulder.

All of the officers interviewed denied that any officer punched or otherwise struck § 87(2)(b) at any point. They denied observing any new injury to § 87(2)(b) or hearing § 87(2)(b) complain of any newly-sustained injuries. Sgt. Magliente stated that § 87(2)(b) complained that the injury to his knee had been aggravated and required medical attention, but denied hearing § 87(2)(b) complain of any new injuries suffered during the struggle. He was later informed after § 87(2)(b) had been diagnosed with an injury to one of his shoulders. Sgt. Guido was also later told that § 87(2)(b) was transported to the hospital and diagnosed with a shoulder injury, but did not know what § 87(2)(b)'s original complaint had been. PO Barreiro was not aware of § 87(2)(b) being hospitalized or diagnosed with a shoulder injury.

After the incident, § 87(2)(b) was transported to § 87(2)(b) for treatment. He complained that he had been assaulted by police officers, stating that an officer had punched him in the neck and pulled his left arm behind his back. The records note the pre-existing injury to § 87(2)(b)'s knee. While an X-ray revealed no fractures or dislocations on § 87(2)(b)'s left shoulder, he was diagnosed with a separated shoulder. His discharge instructions explain that this condition is caused by force to the point of the shoulder. (The National Institute of Health website explains that a separated shoulder is distinct medical condition from a dislocated shoulder. Thus, the fact that § 87(2)(b) did not have any fractures or dislocations does not preclude him from having a separated shoulder.) No injuries are noted to § 87(2)(b)'s neck.

§ 87(2)(b)'s physical condition was additionally noted in his police records. PO Rayjan Lee, one of the officers who escorted § 87(2)(b) to the hospital, prepared a Medical Treatment of Prisoner Report, which noted that § 87(2)(b) complained of pain in his neck and shoulder, as well as to his left knee (See Board Review: Medical Treatment of Prisoner Report). A UF-49 Unusual Occurrence Report prepared by Cpt. Kenneth Noonan further indicated that § 87(2)(b) was treated at the hospital for a separated shoulder (See Board Review: Unusual Occurrence Report).

§ 87(2)(b)'s medical records offer no indication as to whether or not he was punched in the neck. No injuries were observed on § 87(2)(b)'s neck. Though § 87(2)(b) suffered a separated left shoulder, the records indicate that his injury would have been caused by force applied to the point of his shoulder. § 87(2)(g)

§ 87(2)(g)

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Team: 4

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
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